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CURRENT TOPICS

Rubber Stamp Signatures on Bills of Costs

NOTWITHSTANDING the decision of the Court of Appeal in *Goodman* v. *J. Eban, Ltd.*, on 5th March (*The Times*, 6th March, 1954), many solicitors will prefer in future to err on the side of caution and write their signatures on bills of costs or covering letters with their own hands, eschewing the rubber stamp facsimile signature which the court has now held (DENNING, L.J., dissenting) complies with s. 65 (2) of the Solicitors Act, 1932. *Bennett* v. *Brumfitt* (1867), L.R. 3 C.P. 28 (objection to a name on a voters' list) and *In the Goods of Jenkins* (1863), 3 Sw. & Tr. 93 (will) were the authorities on which the court relied. One would hardly have thought that such cases were *in pari materia*, especially as the signature to a will must be witnessed. As Lord Justice Denning said: "Anyone can affix a rubber stamp," just as anyone can affix a seal (*Grayson* v. *Atkinson* (1752), 2 Ves. Sen. 454, at p. 459). The majority held that if the matter had been *res integra* they would have been disposed to hold that the bill must be signed by writing the signature, in the ordinary way. We submit with respect that the authorities which purported in the majority judgments to prevent the matter being *res integra* may have been affected by the decision in *Re Prince Blucher* [1931] 2 Ch. 70, which was not cited, but which decided that a proposal for a composition under s. 16 (1) of the Bankruptcy Act, 1914, must be signed by the debtor personally. The court could obviously not in such circumstances accept a rubber stamp signature. Oddly enough, on the same day as *Goodman* v. *J. Eban, Ltd.*, was before the Court of Appeal, HARMAN, J., commented on a rubber-stamped signature on a solicitor's letter produced in court and asked whether it was the practice nowadays to sign letters in this way.

Committal for Trial at Quarter Sessions and Assizes

IN Home Office circular No. 63/1954, addressed to clerks to justices at the instance of the Lord Chief Justice, the attention of magistrates' courts and courts of quarter sessions is drawn to the present congested state of business on all the circuits. To enable the judges to deal with the increase in the number of causes set down for trial without exposing litigants to undue delay, often amounting to a denial of justice, the criminal work at Assizes should, it is stated, as far as possible be confined to cases which are required by law to be tried at Assizes. The circular recalls that under s. 9 (1) of the Magistrates' Courts Act, 1952, where the offence for which a person is committed for trial is triable by quarter sessions, the duty of the magistrates' court is to commit him to the next quarter sessions. If that quarter sessions is not being held within one month from the date of committal, the magistrates' court may commit him under s. 10 of the Act to some other convenient quarter sessions, that is, normally

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a quarter sessions for some other place which is being held at an earlier date. Under s. 11 of the Act a person may be committed to Assizes for the trial of an offence triable by quarter sessions if the magistrates' court is of opinion that there are circumstances which make the case an unusually grave or difficult one, or that serious delay or inconvenience would be caused by committal to quarter sessions. Before the question of delay falls to be considered under s. 11, states the circular, the use of the convenient court procedure under s. 10 should be considered. The circumstance that the trial cannot be expedited by committal to another quarter sessions under s. 10 would not, however, justify committal to Assizes under s. 11 unless serious delay or inconvenience would otherwise be caused. In particular, the fact that an Assize will be held before the next quarter sessions would not of itself justify a committal under s. 11. As regards the other ground for committal to Assizes under s. 11, the need to commit to Assizes on the ground of the gravity or difficulty of the case will arise less frequently now that county quarter sessions are for the most part presided over by legally qualified chairmen of considerable experience. The circular recognises that there will from time to time be cases presenting features of special difficulty which may properly be sent to be tried before a judge, and says that the position of a defendant, for instance, if he were a magistrate or the holder of an important office in the county, would be a good reason. A further circular (No. 64/1954), addressed to clerks of the peace, draws attention to the opinion of the judges that cases should not be remitted for trial from quarter sessions to Assizes merely because they appear lengthy or present some complication, but only for some exceptional reason.

Police Interrogations

IN *R.* v. *Chalmers*, on 5th March, the Scottish Court of Criminal Appeal issued a special judgment giving guidance to police officers on the interrogation of suspects. Chalmers had appealed alleging wrongful admission of evidence and five judges quashed the conviction and ordered his release. The Lord Justice-General (LORD COOPER), giving the opinion of the court, said that it was not the function of the police to direct their endeavours to obtaining a confession from a suspect to be used as evidence against him at the trial. When the stage had been reached at which suspicion—or more than suspicion—had centred on some person as the likely perpetrator of the crime, further interrogation of that person became very dangerous, and if carried too far—to the point of extracting a confession by what amounted to cross-examination—the evidence of that confession would almost certainly be excluded by the courts. If, in such circumstances, cross-examination was pursued, with the result—perhaps not with the deliberate object—of causing him to break down and to condemn himself out of his own mouth, the impropriety of the proceedings could not be cured by the giving of any number of formal cautions, or by the introduction of some officer other than the questioner to record the ultimate statement.

Developing Character in Law Schools

MR. S. N. GRANT-BAILEY, Dean of the Southampton University Law Faculty, speaking on 4th March, 1954, at a dinner of the Faculty Advisory Committee at which the MASTER OF THE ROLLS presided, said that it was the function of the university law school to devote time, not to the teaching of mere rules of professional ethics, but to make a real attempt to develop professional character. University law schools must appreciate that their obligation to the community extended far beyond the realm of training undergraduates for the practice of the law. It was their function to organise research directed towards a solution of difficult social problems. They had to accept the challenge of modernising and equipping themselves in curricula, outlook, and understanding in order to meet the needs of the times. The law school was the breeding school of the politician and the administrator. It was because of the intricacy of the problem that he suggested the appointment of a Royal Commission to inquire into it.

A Modern Law School

IT is the aim of the Stetson University College of Law in Florida to become a law school patterned after the Inns of Court and Chancery, "around which legal education in England has been centred for centuries," where "promising students are invited to live and study with successful lawyers, who teach them the fundamentals of the profession and hand on to them the accumulated wealth of their wisdom and experience. . . . They enjoy extraordinary opportunities to come into close personal contact with the great legal minds of England—men who look upon them not simply as students, but as future leaders who are being carefully trained and coached to render exceptional service in their chosen profession." These are extracts from an illustrated booklet describing the law school of a university of architectural charm in beautiful surroundings, as the photographs show. Their ten-acre site is only a few minutes from St. Petersburg, with its metropolitan courts, and students will attend seminars and lectures held by visiting members of the bar and bench. Attorneys in practice will attend for refresher courses, and possibly for golf and swimming, facilities for which are conveniently near. Model court rooms are to be erected, a luxury which, so far as we are aware, is not available in any English law school. But then we are still relatively poor as another luxury shows, for "each of the student bedrooms and faculty suites has its own private or connecting bath." In one important respect law education in the U.S.A. has diverged from English traditional law teaching. "Stetson is determined that there shall be no economic illiterates among the lawyers it graduates. Unless they have had satisfying training in the field elsewhere, all of its students will be required to take a comprehensive course in economic theory and practice before they are granted law degrees." If Stetson is right about this, English schools should not disdain to copy, for from the Stetson College of Law have come a U.S.A. Minister, a judge of the U.S. Court of Appeals, an Under-Secretary of the Navy, and many others who have reached high office in their own States.

"Only the Wrapping Arrived"

THREE or four subscribers to THE SOLICITORS' JOURNAL will be disappointed at the non-return of their issues sent for binding. In four instances only the wrapping paper has been delivered by the G.P.O. Two subscribers had luckily marked the wrapping with their name and address. Two others (one posted in Swansea) did not do so and we are unable to inform them so that they may claim on the post office. All volumes sent for binding are acknowledged within two or three days and any reader who has sent issues and not had an acknowledgment should write at once. Care should be taken to see that any issues posted are securely packed and contain name and address both inside the parcel and on the wrapping. Instructions should be sent separately.

Procedure

XXXIV—SOME PRACTICE CASES IN 1953

THE publication in January of the Index to vol. 97 of THE SOLICITORS' JOURNAL prompts a cursory survey, such as we have sometimes undertaken in the past, of those cases on practice and procedure which are reported in the volume but on which we have not so far commented in this series of articles. Pre-occupation with the Evershed Report, with the details of which we were anxious to give our readers some acquaintance, has meant that fewer current decisions were discussed in the latter part of 1953 than was formerly the case.

We may begin our penitent's progress by noticing some points intimated to practitioners in the Court of Appeal during the year. Most of our readers know how anxious can be the task of the solicitor who has the conduct of an appeal in deciding which of the documents used in the court below, and how much of a shorthand transcript of the evidence, should be copied for the use of the Court of Appeal. There is a natural reluctance to leave out anything at all, not, as the profession's critics might too readily assume, on account of the profit costs of copying, but because it is difficult to say positively that a particular passage could never be material. But the duty of selection cannot be evaded. Order 58, r. 11, makes it clear that the copying, which is of course to be done in triplicate, should be confined to that evidence which is relevant to the matters *in controversy on the appeal*. It may be much easier to decide what matters are relevant if and when effect is given to the Evershed Committee's recommendation for more informative notices of appeal, and the burden on the solicitor might be lightened if consultation between junior counsel on the point were to become the general practice. In the meantime there is nothing to prevent the solicitors discussing the matter together. In *Dixon* v. *City Veneering Mills, Ltd.* (97 SOL. J. 780) a reminder was given that indiscriminate copying can have unpleasant results on taxation of costs.

While notices of appeal may still be couched in general terms, it has been directed by the court (97 SOL. J. 876) that a notice of appeal should be endorsed with a certificate by the appellant's solicitors of the date or dates of service on the respondents. The prime object of this step is to ensure by administrative means that appeals do not appear in the list before notice is served on all respondents, but the direction goes on to prescribe a form of additional wording for notices of appeal, designed to warn respondents of the necessity of ascertaining the probable date of hearing. We suggest to solicitors that here is material for at least a sidenote in the precedent books and on stock forms; it appears to carry a responsibility which will not necessarily be escaped by having the notice of appeal settled by counsel.

From *Re Whittle* (97 SOL. J. 811) it is plain that an appeal lies to the Court of Appeal from a judge in chambers in proceedings under the Guardianship of Infants Acts notwithstanding that the matter originated in a magistrates' court. Where the order appealed against is one dealing with custody, the appeal ranks as an interlocutory one, so that the notice is a four-day notice, and must be given within fourteen days of the pronouncement of the judge's order (Ord. 58, rr. 3, 15).

Lastly on the question of appellate procedure, we may draw attention to *Lees* v. *Motor Insurers' Bureau* (97 SOL. J. 298), where a problem arose out of the obvious impropriety of reversing, without hearing the appeal, an order of the High Court. The defendants had obtained judgment on the hearing by Lord Goddard, C.J., of a special case stated by an arbitrator, and the plaintiff appealed. Then, before the appeal was due to come on, the defendants, having obtained the legal ruling they desired, agreed to pay the whole of the plaintiff's claim and costs. How could effect be given to this arrangement? In the opposite case, where the appellant is the party who abandons the fight, there is no difficulty about dismissing the appeal on terms, but the court took exception to the inconsistency involved in dismissing the appeal knowing that the respondent was proposing to treat the particular matter in hand to all intents as if the appeal were allowed. It was held that the proper order in these circumstances was that all further proceedings on the appeal should be stayed except for the purpose of enforcing the agreed terms of settlement.

An important group of cases concerns the competence of proceedings having regard to the status or capacity of the persons in whose names they are brought. Some of these turn on technicalities which Singleton, L.J., has described (*Finnegan* v. *Cementation Co., Ltd.* (97 SOL. J. 332)) as a "blot on the administration of the law," but while these niceties exist a party is entitled to take advantage of them and a solicitor is bound to know them. Until the amendments proposed in a Bill now before Parliament become law, the Fatal Accidents Acts require a claim under the Acts to be brought within twelve months of the death, but enable proceedings to be taken either in certain events by a person of the degree of relationship specified in the Act or by the personal representative. In neither *Finnegan's* case nor *Stebbings* v. *Holst & Co., Ltd.* (97 SOL. J. 264), both actions by the widows of persons fatally injured, was an English grant of representation obtained before the issue of the writ, and the Irish letters of administration granted to Mrs. Finnegan were held to be insufficient to constitute her an administratrix for the purposes of the Fatal Accidents Acts. In each case the action was commenced within the statutory year, but each defendant after the expiration of the year set up a contention to the effect that the writ was a nullity since the plaintiff had no title to sue. The narrow distinction between the two cases appears to be simply this, that in *Stebbings* the writ and indorsement described the plaintiff as "widow and administratrix," whereas in the later case the indorsement laid the claim merely "as administratrix." Thus Donovan, J., was able in *Stebbing's* case to regard the word "widow" as applicable to the Fatal Accidents Act claim, and the erroneous label "administratrix" as referring only to a Law Reform Act claim which was also referred to in the indorsement but which was admitted to be ill founded. The objection failed so far as the claim "as widow" was concerned. On the other hand the Court of Appeal felt bound to uphold the technical point taken against Mrs. Finnegan because the writ made no mention of her capacity as the widow of the deceased, and this omission could not in the circumstances be regarded as repaired by the description of her in the statement of claim as "widow and administratrix," notwithstanding that the statement of claim was delivered with the writ.

A case in which a technicality was raised but did not prevail was *Etablissement Baudelot* v. *R. S. Graham & Co., Ltd.* (97 SOL. J. 45). A writ was issued in the name of the plaintiffs as "Etablissement Baudelot" but described them on the back where the address has to be stated as "a company incorporated according to the laws of France." The trial judge received expert evidence on which he held the plaintiffs not to be an incorporated body at all, but he allowed an amendment to be made adding the names of three individuals

who were in fact carrying on the plaintiffs' business. The Court of Appeal thought he was right in allowing the amendment. It was a case of misnomer, and not one of a non-existent plaintiff.

Order 16, r. 9, is to the effect that where there are numerous persons having the same interest in one cause or matter one or more of them may sue or be sued or may be authorised to defend on behalf of or for the benefit of all. As to representative defendants, the plaintiff in *Campbell* v. *Thompson* (97 SOL. J. 229) applied for and was granted an order that the two officials of a members' club whom she had sued should be appointed by the court to represent all persons who were members of the club on the relevant date. But the plaintiffs in *Smith and Others* v. *Cardiff Corporation* (97 SOL. J. 831), who had purported by their writ to sue on behalf of themselves and all other tenants of a certain type of house provided by the corporation, were met with an objection to their competence to represent all the tenants. The object of the action was to defeat a scheme for differentiation of rents according to income, and the Court of Appeal therefore held that the relief sought would not be beneficial to the whole class. Affluent tenants and poor tenants had conflicting interests, so that, on the principles explained in *Duke of Bedford* v. *Ellis* [1901] A.C.1, the action was not properly constituted as a representative action. It could, however, continue as an action brought by the four plaintiffs as individuals.

We shall glance, in conclusion, at two cases which concern the entry of appearance in unusual circumstances. In *Sheldon* v. *Brown Bayley's Steel Works, Ltd.* (97 SOL. J. 570), a writ of summons was found as a fact not to have been served within the twelve months of life conferred upon it by Ord. 8, r. 1. The defendants nevertheless entered an unconditional appearance. The Court of Appeal held, reversing Barry, J. (97 SOL. J. 474), that the writ was not a nullity, but that its late service was an irregularity which the defendants had waived by their unconditional appearance. The moral is pointed by other defendants in the same action whose appearance to the writ had been conditional. They succeeded in having the service upon them set aside.

The " time for appearance " to a writ of summons is usually understood as being within eight days of service. But this merely indicates a limit beyond which the defendant must not go if he wishes to be certain of not being found in default. Certainly an appearance may be entered at any time before judgment (Ord. 12, r. 22), and *Stern* v. *Friedman* (97 SOL. J. 507) demonstrates that there are situations in which it may be allowed after judgment. The purpose of appearing after judgment would ordinarily be to provide a *locus standi* from which the defendant could apply for the judgment to be set aside, although there are, especially in Chancery actions, other possibilities. No leave to enter appearance after judgment is required in Queen's Bench actions, but in the Chancery Division it is necessary (unless the plaintiff will consent) to apply to the court on special motion or summons giving notice to the plaintiff. That was the course approved by Danckwerts, J., in *Stern's* case, but his lordship when he came to consider the merits of the application did not grant leave, considering that the issues of fraud which the defendant desired to raise if he had been let in to appear would be more appropriate to a separate action.

J. F. J.

A Conveyancer's Diary

MODIFICATION OF RESTRICTIVE COVENANTS

THERE is nothing in the decision in *Richardson* v. *Jackson* [1954] 1 W.L.R. 447; *ante*, p. 145, which needs comment; the court has an absolute discretion whether or not to accede to an application under s. 84 (9) of the Law of Property Act, 1925, and on the particular facts of the case Danckwerts, J., held that the defendants should be given an opportunity to apply to the Lands Tribunal for the discharge or modification of the restrictive covenant on which the action had been brought, despite the delay between the close of pleadings and the application under this subsection. As the arguments are not reported, it is not easy to see why the court took a view which appears, in retrospect, so lenient to the defendants, and parties who may desire to take advantage of this useful provision in the future would be well advised to move a little faster if they wish to make certain of obtaining relief. But although that is all that can be said on this decision itself, the case may be used as an occasion for some more general observations concerning the jurisdictions relating to restrictive covenants conferred by s. 84. After a long period of enforced quiescence private development of land has started up again, and there is no doubt that the suitability of certain restrictive covenants affecting land, for example, in restricting the number or quality of houses to be erected on a given plot, has in many cases been affected by the passage of time since the imposition and the changes which many areas have suffered as a result of development of one kind or another by public authorities. A restriction designed to prohibit the development of a plot at a density of more than, say, four houses to the acre, may have been perfectly reasonable when it was imposed before the war, but it benefits nobody if land on the other side of the road from it has been recently developed by a local authority as a housing estate at a much higher density.

Applications for the discharge or modification of restrictive covenants are, therefore, likely to increase considerably in number in the near future, and the practitioner should be prepared to advise on the procedure and, almost as important, the probable cost of an application. As to cost, unless the case is a very simple one indeed, expert evidence is always needed to describe to the tribunal the changes in the neighbourhood upon which the application will almost certainly be founded, and the preparation of a proof by or for an expert witness, and of the map or maps which usually support this kind of evidence, can never be cheap. The would-be applicant must balance such costs against the benefit which he hopes to derive from a discharge or modification of the covenant, and only he can determine whether an application is capable of yielding a profit. These matters are largely outside his legal advisers' hands. But once it has been decided to apply, the length and complexity of the hearing before the tribunal are to some extent subject to control, if the procedure of these applications is well understood and advantage is taken of this procedure.

This matter is now governed by the Lands Tribunal Rules, 1949, Pt. IV of which is devoted to applications under s. 84 (1). Regulation 16 (1) provides that the president of the Lands Tribunal shall, after an application has been made to the tribunal, determine what notices are to be given, and what the method of notice is to be, to the persons who appear to be entitled to the benefit of the restriction in

question. An appointment has to be made with the president for this purpose, which thus closely resembles an appointment to hear a summons for directions in an action in the High Court. When this appointment is taken it is clearly to the interest of the applicant to reduce, so far as possible, the number of the persons who must be served with notices of the application, and his advisers should, therefore, be prepared at this stage to argue that the class of persons entitled to the benefit of the restriction is small. This is often possible either because the land to which it was originally intended to annex the benefit of the covenant was imprecisely defined, or the nature of the restriction is such that, in fact, an infringement of it could not harm more than a very limited class of immediate neighbours. These are matters which are quite distinct from the questions which arise if an application is made, not to the tribunal under s. 84 (1) for the discharge or modification of a restriction, but to the High Court under s. 84 (2) for a declaration that land is not affected by a restriction or that the restriction is, in the circumstances, not enforceable by any person. Such questions are questions of law, which have to be decided on what may be called the conveyancing history of the land forming the *locus in quo*. The matters which it may be worth arguing before the tribunal (either at the final hearing or, as I have suggested, on the occasion of the preliminary appointment with the president) are, at least to some extent, questions of fact.

Any restriction in the number of persons to be served with notices of the application must result in a corresponding reduction in the number of objectors who appear at the hearing, and any reduction in the number of such objectors must result in a corresponding reduction in the number of potential recipients of compensation or costs, if awarded.

The headnote to the report of *Re Hillier's Trusts* [1954] 1 W.L.R. 9; *ante*, p. 12, seems in one particular to be misleading. The case raised the question of the destination of certain funds which were collected over a period of years for the purpose either of erecting a new hospital in Slough, or of affording better hospital facilities for the residents of Slough. This was a question very similar to that which arose in the recent case of *Re North Devon & West Somerset Relief Fund Trusts* [1953] 1 W.L.R. 1260; 97 SOL. J. 728, of which I wrote in this Diary some months ago (97 SOL. J. 805). One of the circumstances which had to be taken into account in *Re Hillier's Trusts* was the coming into operation of the National Health Service Act, 1946, and the effect which that Act had on the provision of voluntary health services generally, and very reasonably this circumstance was much canvassed in the evidence and in the judgment. The headnote to the report, however, goes much further than this. After referring to the collection of the funds, it states that "it never became possible to build the proposed hospital at Slough, first, because of war conditions and, secondly, because the provisions of the National Health Service Act, 1946, precluded the erection of new voluntary hospitals."

There is, in fact, no provision of this Act which can be said in terms to preclude the erection of new voluntary hospitals, and this part of the headnote is hardly warranted by anything which fell from Upjohn, J., in his judgment in the case. The learned judge referred to the evidence and said that he accepted it as proved that it would now be quite impracticable for a voluntary body of persons to undertake the erection and maintenance of a voluntary hospital at Slough, but that is as far as the judgment on this aspect of the case goes.

What are called hospital services are dealt with in Pt. II of the Act, the general effect of which was twofold: (1) it laid a duty on the Minister to provide hospital accommodation, etc., as part of the health service created by the Act, and (2) it transferred to and vested in the Minister existing voluntary hospitals and (generally speaking) their property, equipment and endowments. But the vesting of hospitals and their property and endowments was expressed to take effect on the appointed day, so that these provisions (as also the ancillary provisions of s. 60) had a "once for all" operation which cannot be repeated. The practical difficulties in the way of founding a wholly new voluntary hospital at the present time are, doubtless, enormous, but as a matter of law it is not accurate to say that the Act of 1946 precludes such a possibility altogether.

"A B C"

Landlord and Tenant Notebook

EFFECT OF CLOSING ORDER

Paradine v. *Jane* (1647), Aleyn 26, has in the course of legal history been mentioned, followed, commented upon, referred to, etc., in many other cases; but attempts to distinguish it have, so far, failed. The action was for rent and the defendant pleaded that his crops had been destroyed during the Civil War by Prince Rupert's cavalry (whose chief failing, it may well be remembered, was not knowing when to stop). The principle applied was that when the party by his own contract creates a duty or charge upon himself, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by contract. It is quite possible that Farmer Jane left the court protesting that the damage was not done by accident, that there was no necessity or at all events no inevitability; but the "might have provided against it by contract" would have been more difficult to deal with. Moreover, one of the judges had pointed out that a tenant, who stood to benefit by unexpected gains, must be prepared to bear unforeseeable losses.

The latest attempt to get round this principle which has come to our notice was made in Clerkenwell County Court on 10th February this year, in the case of *Stevenson (Westminster), L'd.* v. *Mock*. The defendant was weekly tenant of, and, according to her evidence, occupant of the whole of, a four-storeyed house in the Metropolitan Borough of Finsbury. On 1st February, 1952, the borough council made a closing order prohibiting the use of the front and back basement rooms for any purposes other than a purpose approved by itself.

This order was made under s. 12 of the Housing Act, 1936, as amended by the Housing Act, 1949, the amendments being the deletion of words limiting application to houses occupied or of a type suitable for occupation by persons of the working classes. Under s. 11, a local authority, on being satisfied that a *house* is unfit for human habitation and not capable at a reasonable expense of being rendered so fit, is to serve the owner with a notice, as a result of which he may either give a satisfactory undertaking to make it fit or an undertaking that

it shall not be used for human habitation. If no undertaking is given, or if an undertaking given is contravened, the authority makes a demolition order requiring that the house be vacated and demolished. Section 12 provides for like proceedings in relation to any part of a *building* which is used or is suitable for use as a dwelling, or in relation to any underground room deemed for the purposes of the section to be unfit for human habitation, subject to this qualification: when the authority would, in the case of a house, have made a demolition order, it is to make a closing order prohibiting the use of the part of the building or of the underground room for any purpose other than a purpose approved by itself.

A closing order has, therefore, much the same effect as a demolition order; but, while s. 156 of the 1936 Act excludes the premises from the security of tenure provisions of the Rent Restrictions Acts in each case, that exclusion could not avail the landlords in *Stevenson (Westminster), Ltd.* v. *Mock*, the tenancy comprising the whole house. The tenant, who said in evidence that she did not make use of the basement but that it contained the only scullery in the house, made no application for permission to use the condemned rooms but considered herself entitled to an abatement of rent amounting to one-sixth of the amount reserved, and withheld that proportion accordingly. The action was for the arrears so accrued, some £32-odd.

His Honour Judge Done had no difficulty in dealing with the issue. In the opening sentences of his judgment, he pointed out that the order merely restrained the use of the rooms, and did not affect the defendant's title, occupation or possession. The words: "The important point is that the tenant is in no way prevented from having possession" are open to some criticism, but a little later comes: "In any event it does not matter if she is prevented from using the premises at all," which, having regard to the decision in *London and Northern Estates Co.* v. *Schlesinger* [1916] 1 K.B. 20, gives a more accurate picture of the situation. The defendant in that case held a ten years' lease, with restrictions on alienation, of a house at Westcliff-on-Sea; being an alien enemy, he was prohibited from occupying it by an order made under World War I legislation; but was none-the-less held liable for rent.

The only authority cited by the learned county court judge was *Matthey* v. *Curling* [1922] 2 A.C. 180, in which it was held that requisitioning followed by fire did not release a tenant from covenants to pay rent and to repair. It may, however, be significant that the passage cited was one in which Lord Atkinson said: "I cannot find any case in which the rent reserved by the lease was apportioned simply because the lessee was deprived of a portion of the demised premises, his title to that portion not being either assailed, displaced or weakened. On the contrary, the trend of the authorities is, I think, strongly against any such result." This, of course, was appropriate to an occasion on which a right to apportionment had been claimed; but it may be recalled that one of the difficulties which has confronted tenants in these cases is that unforeseen disasters, however catastrophic, do leave them the site. The bare possibility of applying the modern law of frustration, the "modern law relative to the discharge of contractual obligations by impossibility of performance" was mentioned by Lord Wright in *Cricklewood Property and Investment Trust, Ltd.* v. *Leighton's Investment Trust, Ltd.* [1945] A.C. 221, after he had called attention to the fact that the element of tenure was not mentioned in *Paradine* v. *Jane*; and in the same case Lord Simon visualised the possibility of the "site"—within the meaning of the document—ceasing to exist "if, for example, some vast convulsion of nature swallowed up the property altogether, or buried it in the depths of the sea." One might, perhaps, apply this to the more likely case of upper floors of a block of flats destroyed by fire.

Judge Done also adverted, in his judgment, to the absence of any contractual liability for the disrepair of the basement; without, of course, suggesting that such liability would have made any difference. Indeed, if there had been a counter-claim, the only authority on the measure of damages would not take the defendant very far. In *John Waterer, Sons and Crisp, Ltd.* v. *Huggins* (1931), 47 T.L.R. 305, it was held that the fact that premises were protected did not entitle a weekly tenant, compelled to leave them by reason of the landlord's failure to discharge repair and maintenance obligations resulting in a closing order, to damages on a long term basis. The tenancy agreement in that case dated from 1917, a time when the expectation of life in the case of such tenancies was less than what it had become by 1931.

Tenants have, of course, succeeded in "providing against" the consequences of accidental damage by contract; an abatement and suspension of rent clause might well prevent the destruction of upper flats supplying the test I have suggested. An example of such provision operating when action was taken by a local authority was afforded by *Lennox* v. *Curzon* (1906), 22 T.L.R. 611 (C.A.). The lease of a London theatre provided that if the premises should during the term be closed by order of any superior authority or be destroyed by fire rent should be suspended till it re-opened. As the result of the collapse of adjoining premises, the theatre building was so damaged that the London County Council obtained a dangerous structure order at Bow Street ordering the taking down of a wall, etc. The Lord Chancellor then intimated that he would not grant a licence till the county council were satisfied. The theatre had, in fact, been closed as such when the accident occurred, and construction of the proviso gave rise to difficulty, it being argued that one could not close what was not open, also that any closing was caused by the collapse of the neighbouring premises. It does seem possible that what had happened was not quite what had been contemplated (the Lord Chancellor "closes" a theatre only in the event of riotous behaviour, etc.) but the court held, one lord justice expressing doubt, that the magistrate's order did amount to closure by superior authority.

R. B.

HERE AND THERE

LAST WORD

MOST people if asked in general and in the abstract whether they preferred the first place or the last would opt (if pressed and with a proper show of humility) for the former, and doubtless in many situations of life that choice is sound and advantageous, as in a bus queue or wherever the maxim "first come, first served" is recognised and observed. But such are the varieties and complications of human existence that the better part may sometimes lie with the humble and the self-effacing. When it comes to crossing an uncharted minefield or a quagmire there is rarely a violent dispute as to precedence for the honour of taking the first step that counts for so much, and, on the same principle, we know, the Duke of Plaza Toro was content to lead his regiment from behind. The same dichotomy appears on symbolic or ceremonial occasions. It is more honorific for the sovereign or the

sovereign's personification, the judge of assize, to go through a door first. But in the Lord Mayor's Show the Lord Mayor himself rides at the end of the cavalcade, and in a procession of clergy the first in the hierarchy goes behind all the rest. But, whichever way round the arrangement is made, it embodies that shrewd old human sense of realism which declares that everybody can't go up a staircase or down a street or through a door at one and the same time. The same ambiguity pervades the advantages or otherwise of having the "last word." In the ultimate, final and irrevocable sense, it is the word which few of us are in any very great hurry to utter, even if we spend our whole lives preparing and polishing an epigram for the occasion. But apart from that final crescendo (as we hope it will be) there is no certainty whether in the convolutions of life the first word or the last word is the more advantageous. The first word, like the first shot in a duel, may be final and decisive; the last word may be as splendidly ineffective as the last defiant salvo fired from a sinking ship. Beyond all this there is the question: What is the last word? In a legal contest it may be the right of final argument for which counsel contend; or it may be the summing up of the judge, or, again, the verdict of the jury with the finality of "Guilty" or "Not guilty." It may be the speech from the dock before sentence, and many such speeches ring down the corridors of history long after judge and jury are forgotten. It may be the sentence of the court or the royal prerogative to grant or refuse reprieve, and, finally, in the days when public executions sustained the morale of the condemned with the opportunity for an ultimate assertion of his personality in the face of the whole embattled power of the State, it might be the speech from the scaffold, though it is clear that this last word made no difference to the inevitability of the last drop.

LEGAL EQUALITY

It is doubtless a consciousness of these problems and paradoxes that recently divided the Bundestag at Bonn in the debate on the Government's draft Bill to establish the equality of men and women, already provided for in the Basic Law, for as soon as you try to put two linked persons on a footing of absolute equality, the very first problem you run into is the certainty that occasions will arise when an irreconcilable difference of opinion will produce the paralysis of deadlock. In the constitution of Barataria the problem may perhaps be left unresolved, but on less enchanted ground it has hitherto been found necessary to provide some sort of a working solution. Thus the Romans dealt with the difficulty of the dual command of the consuls in military operations by giving each supreme authority on alternate days, an arrangement not calculated to result in a strategy of genius, but at least less likely to produce a catastrophic debacle than the spectacle of two co-equal supreme commanders simultaneously shouting divergent orders at every crisis of the battle. There are occasions when two heads with two mouths are emphatically not better than one. The method by which Dr. Neumayer, the Minister of Justice, proposed to cope with this problem was to enact that in case of an unresolved family dispute the last word should be with the husband. But to this the former Minister of Justice, Dr. Dehler, objected that such a solution was irreconcilable with the Basic Law as importing a return to patriarchy. So far so good; the logic is inescapable, whatever one may feel about the sense. I have not seen a full report of his speech and perhaps, for all I know, he may have suggested that egalitarian honour would be satisfied by tossing up. But, strangely enough, he went on to suggest, if I understand him aright, that equality between husband and wife had always been and still remains an impossibility. The husband's power of decision, he said, had always been very largely a fiction. "In a good marriage a clever wife rules. If the wife is stupid, then the marriage is a bad one." You see what the implication of that is. "We must keep the written law consistent," says, in effect, Dr. Dehler, "but don't for one moment imagine that it will make any difference to life as it is lived. Under the old law you had patriarchy in theory but matriarchy in practice. It won't really be any different under enacted equality." On his other point, about the clever and the stupid wives, I hope that he will have the courage of consistency and introduce another Bill to make a wife's (but not a husband's) stupidity ground for divorce, since the former impedes, but the latter does not, the smooth operation of a good marriage, the dominance of the wife within the framework of theoretical equality. The effect of giving neither the husband nor the wife the last word is not by any means so inconclusive and unsatisfactory as it may look at first sight. If one or other were awarded in law the last word, that right could only be enforced by external arbitrament and in marriage external arbitrament counts for nothing. All disputes must be settled ultimately by the personal resources of the parties. And, anyhow, after they have bandied all the words in the dictionary, who really wants the last word? It's the conclusion in action that matters, and Dr. Dehler knows who wins on that.

RICHARD ROE.

BOOKS RECEIVED

Taxes and Interconnected Companies. By FRANK BOWER, C.B.E., M.A. 1954. pp. 19.

Statutory and Non-Statutory Reliefs. By J. R. PARAMOUR, F.C.A., F.S.A.A. 1954. pp. 18.

The Finance Act, 1953. By D. O. BAILEY, A.S.A.A. 1954. pp. 20.

The above booklets are published by the Incorporated Accountants' Research Committee, price 2s. net each.

Rating Valuation Practice. Supplement to the Third Edition. By PHILIP R. BEAN, F.R.I.C.S., F.A.I., F.R.V.A., and ARTHUR LOCKWOOD, M.B.E., F.R.I.C.S., F.A.I., F.R.V.A. 1954. pp. 20. London: Stevens & Sons, Ltd. 2s. 6d. net.

Bateman's Law of Auctions. Eleventh Edition. By DAVID NAPLEY, Solicitor of the Supreme Court (Honours). 1954. pp. lxxix and (with Index) 593. London: The Estates Gazette, Ltd.; Sweet & Maxwell, Ltd. £2 12s. 6d.

The Conveyancer and Property Lawyer. Volume 17 (New Series). Editors: DONALD C. L. CREE, M.A., of Lincoln's Inn, Barrister-at-Law, and EDWARD F. GEORGE, LL.B., Solicitor of the Supreme Court. 1953. pp. xii and (with Index) 600. London: Sweet & Maxwell, Ltd. £2 5s. net.

Advice on Advocacy in the Lower Courts. Second Edition. By F. J. O. CODDINGTON, M.A. (Oxon), LL.D. (Sheff.), Stipendiary Magistrate (1934–1950). With a Foreword-Essay by The Rt. Hon. Sir NORMAN BIRKETT, P.C., LL.D. 1954. pp. viii and 34. Chichester: Justice of the Peace, Ltd. 5s. 6d. net.

Evidence in Criminal Cases. By WILLIAM SHAW, M.A., Late Clerk to the Justices for the City of Manchester. Fourth Edition by MICHAEL LEE, of the Middle Temple, Barrister-at-Law. 1954. pp. li and (with Index) 310. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. £1 2s. 6d. net.

REVIEWS

Theobald on the Law of Wills. Eleventh Edition. By J. H. C. MORRIS, D.C.L., of Gray's Inn, Barrister-at-Law. 1954. London: Stevens and Sons, Ltd. £3 15s. net.

This is the third edition of "Theobald" which Dr. Morris has undertaken, and the benefit which this useful book has derived from the conjunction of continuity of treatment and the editor's well-known *expertise* in this branch of the law is everywhere apparent. The rewriting of sections of the book started in the two last editions has continued in this, and would doubtless have gone further if the editor had not felt it necessary, apparently, to rewrite again some chapters already rewritten. Three new chapters on Conflict of Laws, for example, have now appeared. As to the routine work of editorship, this edition stands up well to the usual tests. All decisions which we looked for of the six years since the last edition were found in the appropriate places. The policy of including references to comments and criticism of the cases in current periodical literature has been continued and extended (but, for the benefit of those without easy access to journals like the *Law Quarterly Review*, a note of the gist of the comment or criticism would be a useful addition). And another welcome feature which Dr. Morris has introduced during his editorship is again apparent in the citation of Dominion cases where those elucidate an obscurity or fill a gap in the English law.

One general fault must, however, be remarked: the size of this book is growing, and if its usefulness as the most reliable one-volume work on the subject is to be maintained, this growth must be checked. Dr. Morris has, in past editions, excluded a good deal of matter, and he should consider whether the remaining chapters on specialised topics should not also be deleted. These would include the newly added chapter on duties and taxes, which is much too short to serve as more than the roughest guide, and the much longer chapter on gifts for charitable purposes, which, Dr. Morris writes in his preface, it has been a particular strain to keep up to date. Another possible means of saving space would be to cite one case only in support of those statements which are uncontroversial and on which a clear modern authority exists. Admittedly the opportunity for pruning the citation of authorities is limited in a book on a subject like this, but it is not non-existent.

The appearance of this volume is very different from the immediately post-war economy dress of its predecessor, and it is a pleasure to handle a book so well printed on such good paper, with such wide margins, to minister to the comfort of the eye and leave space for those annotations which, in time, double the value of any text book.

The Law of Trusts. Sixth Edition. By GEORGE W. KEETON, M.A., LL.D., of Gray's Inn, Barrister-at-Law. 1954. London: Sir Isaac Pitman & Sons, Ltd. £2 5s. net.

Professor Keeton is one of the most successful teachers of law of his generation, and this is one of the most popular students' text books of the day. There is, therefore, little that a reviewer can usefully say by way of general comment on this book, except that in the process of being brought up to date it has lost none of its original qualities. But the best books can be improved, and the notes which follow concern matters which, as a re-reading of several chapters has revealed, may afford some scope for clarification or amendment in the future.

There is, here and there, a tendency to abandon the language which a lawyer would normally use to describe a concept or a principle for expressions which seem to afford no advantages counteracting their unfamiliarity. Thus the expression "imperfect gift," so well established over the years, does not appear in the index, and when the doctrine that equity will not perfect such a gift is tracked down, it is found treated as an illustration of the distinction between completely and incompletely constituted trusts. That is, of course, the right place in which to find it; but a signpost of a familiar kind to its location would still be useful. Again, the expression "identification" sounds strangely in the ear as a description of the principle applied in *Re Lucas* [1948] Ch. 424. Then the longish note in the section on perpetuities on the so-called rule in *Whitby* v. *Mitchell* and the *cy-près* principle in relation to entails seems out of place, in 1954 at any rate, in a book on trusts. Sometimes rules are too broadly stated or insufficient attention is paid to the often decisive part played by the construction of differently worded documents in the cases: examples can be found in the otherwise excellent sections on forfeiture clauses and protective trusts. And the statement based on *Re Slevin*, on p. 168, is somewhat misleading. Two final criticisms concern matters of detail. The notes to the print of the Trustee Act, 1925, in the appendix are still very sporadic, and a note showing the legislative history of each section would be very helpful to the student; and the references to the reports of cases in both the footnotes and the table of cases, which are often incomplete and out of date, need wholesale revision.

Paterson's Licensing Acts. Sixty-second Edition. By F. MORTON SMITH, B.A., Solicitor, Clerk to the Justices for the City and County of Newcastle-upon-Tyne. 1954. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. £2 17s. 6d. net.

Mr. Morton Smith is to be congratulated on the speed with which he has brought out this edition of Paterson containing the Licensing Act, 1953. Practically the whole of the law relating to intoxicating liquor is now contained in two Acts of Parliament, viz., the Customs and Excise Act, 1952, and the Licensing Act, 1953, but this consolidation has reduced the size of Paterson by only forty-seven pages.

The new Act has been annotated in the same detail as the earlier Acts were, and although in the time available the editor has not been able to discuss every problem which may arise on the new Act and to point out all the places where it differs from the old law, the book continues to be essential to all practitioners who deal with licensing matters. The action of Parliament in passing the Licensing Act last year has unfortunately made the sixty-first edition out of date, but we can advise the purchase of the new edition with every confidence that the user will find in it the same careful, full and lucid commentary on the law as previous editions have contained. An especially useful feature is a comparative table showing which part of the new Act has replaced the repealed provisions.

Staples on Back Duty. Sixth Edition. By RONALD STAPLES, Editor of *Taxation*, and PERCY F. HUGHES, A.S.A.A., F.C.I.S. 1953. London: Gee & Co. (Publishers), Ltd. £1 1s. net.

Even those who claim to know least about the niceties of Revenue law are aware that the settlement of claims in respect of income which has "escaped" taxation turns largely upon consideration of the penalties which the Crown may, in most but not all cases, exact if it chooses to do so. And, as the Income Tax Codification Committee reported: "The flotsam and jetsam of a century's legislation have nowhere accumulated into a greater confusion than in the mass of enactments which prescribe penalties . . ."

The 1952 Act has in no way improved matters and this well-known book is unique in treating of the problems involved in dealing with these *contretemps* when they occur. Like many books on income tax it is written from an accountancy standpoint, and some chapters, like those on methods of investigation and the preparation of capital statements, are not of direct interest to the lawyer. But the lawyer will be very greatly assisted by the chapters on fraud and wilful evasion, on the collection and mitigation of penalties, on the time limits for assessments and on the general tactics to be employed. The book does not confine itself to income tax but deals in addition with excess profits tax, profits tax and excess profits levy.

Your reviewer recommends the book to all who have to deal with these matters, but he does not greatly care for the advertisement matter inserted at p. 18.

Guide to the Legal Profession. By MAURICE W. MAXWELL. Fourth Edition. 1954. London: Sweet & Maxwell, Ltd. 7s. 6d. net.

Since the last edition of this well-known guide for students, the changes in the syllabus for The Law Society's Final Examination have necessitated considerable re-writing, and the opportunity has been taken to revise the whole of the chapters on barristers, on solicitors, and on the law degrees of the University of London. The chapters dealing with the study of the various branches of the law, with particular reference to recommended text-books, have been rearranged and brought up to date, and the work continues to justify its reputation as a valuable one for both study and reference.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

CANADA: INTER-PROVINCIAL MOTOR BUS SERVICE: EXCLUSIVE DOMINION LEGISLATIVE COMPETENCE

A.-G. for Ontario and Others *v.* Winner and Others (and cross-appeal)

Lord Porter, Lord Oaksey, Lord Tucker, Lord Asquith of Bishopstone and Lord Cohen
22nd February, 1954

Appeal from the Supreme Court of Canada.

This appeal arose out of an action brought by S.M.T.(Eastern), Ltd., which held licences granted by the Motor Carrier Board constituted under the Motor Carrier Act, 1937, of New Brunswick, to operate motor buses over certain highways in that province, for an injunction against the defendant, Israel Winner, a resident of the United States of America, who operated a motor bus service from Boston through the State of Maine and through the province of New Brunswick to a town in Nova Scotia, to restrain him from embussing and debussing passengers and goods within the province of New Brunswick. The defendant held a licence from the New Brunswick Motor Carrier Board authorising him to run his buses through New Brunswick "but not to embus or debus passengers in the province." The question was whether it was within the legislative power of the province of New Brunswick by the Act of 1937 or regulations made thereunder, or within the power of the Motor Carrier Board by the terms of the licence granted by it, to prohibit the defendant from carrying passengers from points outside the province to points within it and vice versa, and also to carry purely intra-provincial traffic. That question depended upon the construction of s. 92 (10) (*a*) of the British North America Act, 1867, which provided that: "In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say—(10) Local works and undertakings other than such as are of the following classes—(*a*) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province." The Supreme Court of Canada (consisting of nine judges) held that, apart from intra-provincial traffic, the defendant's undertaking was excepted under s. 92 (10) (*a*) of the Act of 1867 from provincial legislative competence. The Attorney-General for Ontario, who with the Attorney-General for Canada and the Attorneys-General for six other provinces had intervened in the matter, appealed with others against the decision of the Supreme Court so far as it related to inter-provincial traffic. The defendant cross-appealed against that court's decision in relation to intra-provincial traffic.

LORD PORTER, delivering the judgment, said that the words "works and undertakings" in s. 92 (10) (*a*) of the Act of 1867 were to be read disjunctively, so that if either "works" or "undertakings" connected the province with others or extended beyond its limits the Dominion Parliament alone was empowered to legislate in respect of them. Accordingly, it was not within the legislative powers of the province of New Brunswick by the Act of 1937, or within the powers of the Motor Carrier Board by the terms of the licence granted by it, to prohibit the defendant from carrying passengers from points outside the province of New Brunswick to points within the province and vice versa. While the province admittedly made, maintained, controlled and regulated the use of the roads within the province, and had authority over them to that extent, nevertheless in the case of inter-provincial undertakings connecting one province with another and extending beyond the limits of the province the jurisdiction of the Dominion under s. 92 (10) (*a*) could not be impaired by the province's general right of control over its roads. So to construe s. 92 (10) (*a*) would destroy the efficacy of the exception. Here the Motor Carrier Act or the licence or both combined had the effect of sterilizing the functions and activities of the defendant's undertaking in its task of connecting New Brunswick with both the United States of America and with the province of Nova Scotia, and were an interference with the prerogative of the Dominion. Further, the defendant was not engaged in two enterprises, one within the province and the other of a connecting nature; his undertaking was in fact one and indivisible—an inter-connecting undertaking—and the defendant could not be prohibited, as part of that one undertaking, from taking up and setting down passengers whose journey both began and ended within the province. The appeal was accordingly dismissed and the cross-appeal allowed.

APPEARANCES: *Dana Porter*, Q.C., and *C. R. Magone*, Q.C. (for Ontario, appellant); *H. J. Wilson*, Q.C. (for Alberta, appellant); *W. E. Darby*, Q.C., and *J. O. C. Campbell*, Q.C. (for Prince Edward Island, appellant); *L. Tremblay*, Q.C. (for Quebec, respondent) (*Lawrence Jones & Co.*); *C. F. H. Carson*, Q.C. (for Israel Winner, Canadian National Railway and Canadian Pacific Railway, respondents) (*Blake & Redden*); *John F. H. Teed*, Q.C. (for New Brunswick, respondent) (*Norton, Rose, Greenwell & Co.*); *F. P. Varcoe*, Q.C., and *Frank Gahan*, Q.C. (for Canada, respondent) (*Charles Russell & Co.*); *J. A. Y. MacDonald*, Q.C., and *Ralph Millner* (for Nova Scotia, respondent) (*Burchells*); and *C. R. Magone*, Q.C. (for British Columbia, appellant) (*Gard, Lyell & Co.*). S.M.T. (Eastern), Ltd., were not represented.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 418**

FIJI: GIFT DUTY: APPEAL TO COURT OF APPEAL: COMPETENCY

Rice *v.* Commissioner of Stamp Duties

Lord Cohen, Sir Lionel Leach, Mr. L. M. D. de Silva
23rd February, 1954

Appeal from the Fiji Court of Appeal and from the Supreme Court of Fiji.

Section 51 of the Death and Gift Duties Ordinance of Fiji (Laws of Fiji, 1945, Rev., c. 151) provides that: "Within one month after the making of any gift the value of which is not less than £1,000 . . . the donor shall deliver to the commissioner a statement in the prescribed form . . . and containing all such particulars with respect to the gift . . . as are necessary to enable the commissioner to determine whether the same is . . . dutiable and to assess the duty thereon, if any, and the commissioner shall thereupon proceed to assess and recover the duty accordingly."

The appellant, Phillip Rice, on 14th March, 1951, assigned to his wife absolutely a policy of insurance on his life for £1,000, together with all accrued and future bonuses, it being his intention to continue paying the premiums to keep the policy up. At the date of the gift the surrender value of the policy did not exceed £400. The appellant having refused to file a statement under s. 51 of the Ordinance, the respondent, the Commissioner of Stamp Duties, assessed the gift for duty under the Ordinance at £57 15s. 6d., as being 5 per cent. (the rate fixed by s. 45) on "policy value plus accrued bonuses £1,155 12s." On a case stated pursuant to s. 59 of the Ordinance to the Supreme Court of Fiji, that court (Vaughan, C.J.) affirmed the assessment of the commissioner, holding that the true value for the purposes of assessment to duty was not the value at the time of the gift, but that the interest of the donee was affected by a contingency—that the amount which the donee would recover would depend on whether the premiums were paid up during the rest of the donor's life or the policy was surrendered at some earlier date—and that the commissioner was bound to, and did, compute the value of the gift in accordance with the terms of s. 46 (1) and s. 15 of the Ordinance, which dealt with interests affected by a contingency.

The appellant appealed to the Court of Appeal of Fiji. That court held that they had no jurisdiction to entertain an appeal from a decision of a single judge of the Supreme Court under s. 59 of the Ordinance since, in their view, he was not sitting "in first instance" within the meaning of s. 11 of the Court of Appeal Ordinance, 1949, which provided that "an appeal shall lie in any cause or matter . . . to the Court of Appeal from a single judge of the Supreme Court of Fiji sitting in first instance . . . from all final orders, judgments and decisions . . ."

The appellant now appealed against both the judgment of the Supreme Court and the decision of the Court of Appeal.

LORD COHEN, delivering the judgment, said that the value of the gift for the purposes of the Ordinance was the value at the date of the gift. The interest of the donee was an absolute

interest unaffected by any contingency, for the uncertainty as to the amount which the insurance company would ultimately have to pay could not produce the result that the interest of the donee in the subject-matter of the gift was affected by a contingency. The intimation by the appellant that he intended to keep up the policy by paying future premiums was only a statement of intention to make further gifts in the future and could not amount to a gift. Accordingly, the value of the gift being below £1,000, it was not liable to any gift duty.

On the second point: the meaning of "sitting in first instance" had to be considered where those words appeared in a statute constituting a Court of Appeal; the words were plainly directed to limiting a litigant's right to appeal from one court of justice to another. While some of the provisions of the Death and Gift Duties Ordinance undoubtedly indicated that the commissioner had some of the powers which he might be expected to possess if he were exercising judicial functions, there were plainly absent certain provisions which were usually regarded as essential to the due administration of justice in a court of justice, and in the circumstances it could not be held that the decision of the commissioner on a question of law could be regarded as the decision of a court of justice. That being so, the decision of the Supreme Court on a question of law under s. 59 of the Ordinance was accordingly the first judicial decision on the point, and was therefore subject to appeal to the Court of Appeal.

Appeal allowed on both points.

APPEARANCES: *Quass*, Q.C., and *Biden Ashbrooke* (*Barrow, Rogers & Nevill*); *J. G. Le Quesne* (*Burchells*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 460**

HOUSE OF LORDS

MINES AND MINERALS: NEGLIGENCE: SHOT-FIRER'S FAILURE TO WARN

National Coal Board *v.* England

Lord Porter, Lord Oaksey, Lord Reid, Lord Tucker and Lord Asquith of Bishopstone 25th February, 1954

Appeal from the Court of Appeal ([1953] 1 Q.B. 724; 97 SOL. J. 352).

A mineworker, injured by the premature explosion of a detonator, sued the mine-owners for damages for breach of statutory duty by their servant, a shot-firer, who had admittedly committed a breach of the Explosives in Coal Mines Order, 1934, art. 2, by firing without having first ascertained that all persons in the vicinity had taken proper shelter; but the injured mineworker had also committed a breach of the regulations in that, by agreement with the shot-firer, he had undertaken to couple up the cable to the detonator, a duty imposed by the regulations on the shot-firer. He was actually in the act of coupling up when the explosion occurred.

LORD PORTER said that the respondent sought to support his claim on the grounds that (1) the appellants were liable for the shot-firer's breach of statutory duty; (2) whether they were so liable or not, the shot-firer was guilty of common-law negligence and, on the principle of *respondeat superior*, the appellants must answer for his wrongdoing; (3) the appellants had failed to provide a safe working system. Further, he contended that no contributory negligence on his part had been established and that, even if it had, it was not the cause of the injury. The shot-firer was in breach of his statutory duty in more respects than one but it was urged that those duties were imposed on the shot-firer himself, who must be appointed by the manager and, it was said, was not under the control of the owners in this respect; therefore it was maintained on behalf of the employers that they were not vicariously liable on the ground that he acted contrary to the regulations which he was bound to follow. Having regard to the opinion which his lordship held on the second argument, it was not necessary to determine this question, which was left undetermined in *Harrison* v. *National Coal Board* [1951] A.C. 639. As a variant of this argument, the appellants contended that, inasmuch as the regulations prescribed the duty which the shot-firer had to carry out, his common-law duty of exercising due care was superseded, he was liable only for breach of statutory duty and the appellants were not liable for his failure to perform it. This question must be decided since, if that were the shot-firer's only duty, the appellants would be absolved from any liability at common law or indeed from any liability, provided they were not liable for the shot-firer's breach of the statutory regulations. The matter had been decided in *Matuszczyk* v. *National Coal Board* [1953] S.C. 8, where the contention was rightly rejected. The respondent was also guilty of common-law negligence. Two matters remained for consideration: (1) What in the legal sense was the cause of the accident? (2) If it was the result of the negligence of both men, should the proportion attributed to each by the judge be altered? (The judge had assessed the damages at £2,400, but said that he would award only half that amount on the ground of the respondent's contributory negligence.) The Court of Appeal held that the legal cause was the shot-firer's act, and that there was no ground for reducing the damages. The appellants, relying on the fact that the explosion took place before the miner had completed his self-imposed task, maintained that a miner caught in the act of coupling up the detonator was altogether outside the scope of his employment and therefore solely responsible for his own injury, but in acting as he did he was rather engaged in carrying out his employment as a mineworker in a wrong way than altogether departing from it. One further matter must be determined: Were the men alike engaged in a crime so that the maxim *ex turpi causa non oritur actio* applied and the respondent could not recover? A breach of a statutory obligation drafted to ensure the adoption of a careful method of working was not a *turpis causa* within the meaning of the rule. As to the ratio in which the damages were to be attributed to each party, the total sum should be diminished by no more than one-quarter and the respondent should be awarded £1,800.

The other noble and learned lords agreed in this conclusion, save that Lord Tucker and Lord Asquith of Bishopstone would not have disturbed the judge's apportionment of damages.

APPEARANCES: *Gerald Gardiner*, Q.C., and *Meurig Evans* (*Donald H. Haslam*, for *W. H. F. Barklam*, Cardiff); *H. Edmund Davies*, Q.C., and *Alun Davies* (*Theodore Goddard & Co.*, for *Morgan, Bruce & Nicholas*, Pontypridd).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 400**

COURT OF APPEAL

DIVORCE: ADULTERY: EVIDENCE OF PARTICIPATOR: NECESSITY FOR CORROBORATION

Galler *v.* Galler

Singleton, Jenkins and Hodson, L.JJ. 4th February, 1954

Appeal from Mr. Commissioner Grazebrook.

In answer to a husband's petition for a divorce on the ground of desertion the respondent alleged that her husband had, *inter alia*, committed adultery. The only evidence given as to adultery was that of a woman who, after the petitioner's wife had left him, was engaged as a nurse for his three children. She slept in a room with the petitioner's two girls and in her evidence she said that she had frequently committed adultery with the petitioner in her bedroom. She remained for nearly two years, when she left after a quarrel with the petitioner. Her evidence was uncorroborated by any other evidence of adultery and was categorically denied by the petitioner. The commissioner was of opinion that the woman was a witness of truth, and accepted her evidence. He accordingly pronounced a decree in favour of the wife on the ground of adultery. The petitioner appealed, the substantial ground of the appeal being the nature and sufficiency of the evidence called in support of the allegation of adultery.

HODSON, L.J., delivering the first judgment, said that the case was one where, there being no corroboration of the evidence given by the participator in the adultery alleged, the commissioner had given no indication in his judgment that he had directed himself that when evidence of that kind was given, the court should be very slow to act on it. It was not the law that the court could not do so, but it was the law that it was unwise so to do, and that juries must be directed that it was unsafe to act on uncorroborated evidence of that nature, although they were at liberty to do so if they felt sure. It had been his experience that when evidence of the kind in the present case was given in divorce cases it was treated with the caution he had described for the obvious reason that a charge of that kind was particularly difficult to rebut in the case where a man, alone in the house, had a nurse to look after his children, or a housekeeper to look after himself. If a charge was made against the man in such circumstances, it was very difficult for him to rebut it by any affirmative evidence other than his own. The person making the accusation was putting forward his or her own wrong-doing and was in the same kind of position as an accomplice, and it had always been considered that a warning

should be given before the evidence of an accomplice was accepted without corroboration. His lordship referred to *Fairman* v. *Fairman* [1949] P. 341; 65 T.L.R. 320, and *Preston-Jones* v. *Preston-Jones* [1951] A.C. 391; [1951] 1 T.L.R. 8, and said that it might appear from passages in the judgments in the former case that the *ratio* of the decision in that case, that when a witness gave evidence in matrimonial proceedings that he or she had committed adultery with a party to those proceedings, the evidence must be treated with the same circumspection as the evidence of an accomplice in criminal courts, was the analogy of criminal law. He thought, however, that the result was the same by whichever road one travelled. In divorce, as in crime, one had to be satisfied beyond reasonable doubt, and he saw no reason to depart from the view which he thought had always been held, that an adulterer who gave evidence of his or her own adultery was in the same position as an accomplice in a criminal case. The dangers of relying on his or her unsupported evidence were great, and a warning should be given. He thought that there must be a new trial on the issue of adultery.

SINGLETON and JENKINS, L.JJ., agreed. Appeal allowed.

APPEARANCES: *P. Panto* (*Bernard Oberman & Co.*); *G. W. Willett* (*Walmsley & Stansbury* for *E. W. Marshall Harvey & Dalton*, Bournemouth).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] **[2 W.L.R. 395**

CONTRACT: NON-PAYMENT OF INSTALMENT: RESCISSION BY VENDOR: RECOVERY OF INSTALMENTS PAID

Stockloser *v.* Johnson

Somervell, Denning and Romer, L.JJ. 12th February, 1954

Appeal from Hallett, J.

By contracts between the parties a purchaser agreed to purchase from the vendor plant and machinery which were being used in the W. and P. lime quarries on a royalty basis. The contracts provided that payment of the purchase price should be made by instalments, and that should the purchaser make default in any instalment for a period exceeding twenty-eight days the vendor should be entitled to rescind the contract, forfeit the instalments already paid and retake possession of the plant and machinery. The purchaser having made default in payment of an instalment the vendor rescinded the contracts and forfeited the instalments paid. He also acquired the lease of the W. quarry. The purchaser, who was financially unable or unwilling to complete the contracts, claimed the return of the paid instalments on the ground that the effect of the forfeiture clause was penal and unconscionable and in equity he was entitled to relief. The trial judge refused the purchaser relief in respect of the P. instalments, but held that the vendor by purchasing the lease of the W. quarry had put it out of the power of the purchaser to obtain specific performance of the contract and the purchaser was entitled to the return of those instalments, subject to deductions for depreciation of plant and machinery, etc. The vendor appealed and the purchaser cross-appealed.

SOMERVELL, L.J., said that the forfeiture clause could not be regarded as penal in its nature. There was no valid distinction between the claims under the P. and W. contracts, and the vendor had not prejudiced the position by acquiring the W. lease. The purchaser could only recover if he satisfied the court that it was unconscionable in the vendor to retain the money. It appeared that the court could grant relief against the enforcement of the forfeiture provisions, although there was no fraud or sharp practice and although the purchaser was unable to find the balance; that seemed to follow from *In re Dagenham* (*Thames*) *Dock Co.* (1873), L.R. 8 Ch. 1022. The appeal should be allowed and the cross-appeal dismissed.

DENNING, L.J., agreeing, said that the vendor was not seeking to exact a penalty, he was seeking only to retain money paid to him contractually, which belonged to him, and which an express clause permitted him to keep. The purchaser was seeking restitution of money paid and must have recourse to principles different from those applicable to penalties. The vendor's contention, that the purchaser could only recover the money if he was able and willing to perform the contract, went too far. If the purchaser was seeking to re-establish the contract or to obtain specific performance, that contention would be right, but here the purchaser was merely seeking to get his money back. The cases seemed to establish that when there was a forfeiture clause, a purchaser in default could not recover his money at law. But he might have a remedy in equity (*Steedman* v. *Drinkle* [1916] 1 A.C. 275). The question was, what circumstances gave rise to the equity; and he would agree with Somervell, L.J., that two things were necessary: first, the sum forfeited must be out of all proportion to the damage, and, secondly, it must be unconscionable to the vendor to retain the money, in that he ought not unjustly to enrich himself at the purchaser's expense. This equity was not barred by the purchaser's inability to complete; that was the very reason why he needed it. It was to be tested by the conditions existing at the time when it was invoked. It could not be invoked to claim restitution of a first instalment of 5 per cent. of the price, but when the instalments paid amounted to 90 per cent. it was very different. In the present case the purchaser had gambled on the royalties he received being higher than the instalments he had to pay; he had gambled and lost, and there was nothing unconscionable in the vendor's retaining the money. There was no distinction between the P. and W. transactions; the purchase of the W. lease by the vendor did not create an equity for the purchaser.

ROMER, L.J., agreed, but said that in his view after rescission by the vendor relief would only be given if there was some special circumstance such as fraud, sharp practice or other unconscionable conduct, while before rescission a purchaser would only get relief if able and willing to complete. Appeal allowed. Cross-appeal dismissed.

APPEARANCES: *F. W. Beney*, Q.C., and *Harold Brown* (*Lovell, Son & Pitfield*, for *Pitfield & Oglethorpe*, Petworth); *Neil Lawson* (*Kenneth Brown, Baker, Baker*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 439**

CHARTERPARTY: LIBERTY TO OWNERS TO SUBSTITUTE SIMILAR SHIP: HOW OFTEN EXERCISABLE

S. A. Maritime et Commerciale of Geneva *v.* Anglo-Iranian Oil Co., Ltd.

Somervell, Birkett and Romer, L.JJ. 15th February, 1954

Appeal from Devlin, J. ([1953] 1 W.L.R. 1379; 97 SOL. J. 797).

By a charterparty shipowners contracted to provide the charterers with a named vessel for a series of voyages over a stated period. Clause 38 of the charterparty provided: "Owners have the liberty of substituting a coiled vessel of similar size and position at any time before or during the charterparty and owners undertake to give charterers reasonable notice of such intention." Before the first voyage the owners notified the charterers of their intention to substitute an identical vessel for the named vessel. Thereafter the substituted vessel fulfilled the charterparty until compelled to go into dry dock for repairs. The owners then proposed to substitute the originally named vessel for the remainder of the charter voyages and so informed the charterers. The latter refused to accept the substitution on the ground that cl. 38 gave the owners liberty to make only one substitution and they had already exercised that liberty before the commencement of the charterparty. The owners claimed damages for breach of charterparty. Devlin, J., gave judgment for the owners. The charterers appealed.

SOMERVELL, L.J., said that as a matter of English the words were capable of covering successive substitutions; if it were otherwise, the words "at any time" would be surplusage. The owners could substitute a vessel at any time when it became convenient; that was the natural meaning of the words.

BIRKETT and ROMER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *J. Megaw*, Q.C., and *M. Kerr* (*William A. Crump & Son*); *E. Roskill*, Q.C., and *B. B. Goodden* (*Stokes and Mitcalfe*).

[Reported by F. R DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 492**

CHANCERY DIVISION

JOINT POWER OF APPOINTMENT IN SETTLEMENT: WHETHER GENERAL OR SPECIAL: RULE AGAINST PERPETUITIES

***In re* Churston Settled Estates**

Roxburgh, J. 20th January, 1954

Adjourned summons.

By a deed of 1895, the Churston estates were resettled to such uses and on such trusts as Lord Churston the grandfather and his son, *J*, should (during Lady Churston's life, with her written consent) jointly appoint and, in default of appointment, to uses

for the joint lives of Lord Churston and *J*, with remainder to *J* for life, with remainder to *J's* first and other sons successively in tail male. By a deed of 1898, Lord Churston the grandfather and *J*, exercising that power with Lady Churston's written consent, appointed the property to such uses and on such trusts as Lord Churston the grandfather, the grandmother and *J* should jointly appoint and, in default of and subject to appointment, as the grandmother and the survivor of the two others should jointly appoint and subject thereto to certain uses, with remainder to the uses in the deed of 1895 after *J's* life estate. In 1923, in exercise of the power in the deed of 1898, Lady Churston and *J* (by then Lord Churston the father) jointly appointed the property to such uses as they themselves should jointly appoint and, in default of appointment, as Lord Churston the father and *H* should after her death jointly appoint and, subject to appointment, to the use of Lord Churston the father for life. In 1924, Lady Churston died, and in 1926 the property comprised in the deeds of 1895, 1898 and 1923 was vested in fee simple on the appropriate trusts in Lord Churston the father. By a deed of 1927, Lord Churston the father and *H*, exercising their power under the deed of 1923, appointed the property as *M* and *C* (who were both alive at the date of the deed of 1895) should jointly appoint. In 1928, *H* died and by a deed of 1930 Lord Churston the father, *M* and *C*, exercising their power under the deed of 1927, appointed the property on such trusts as Lord Churston the father's son, *R*, and *M* and *C* should after Lord Churston the father's death jointly appoint, and in default of that and other appointments therein mentioned for *R* for life and his first and other sons successively in tail male. In 1931, the property was vested on the appropriate trusts in *R* (by then Lord Churston), who forfeited his life interest by creating a charge in 1932, since when the trustees paid the income to him. In 1933, on his marriage, he created a trust for portions for younger children. By an appointment of 1940 Lord Churston, *M* and *C*, exercising their power under the deed of 1930, appointed the property to be held on the trusts of the deed of 1930, but substituting for those therein to take effect, after Lord Churston's death, trusts for his son for life and after his death for that son's sons in tail male. In 1942 (*C* having died), Lord Churston and *M* appointed the property to be held as Lord Churston and four nominated persons (including *M*) should appoint, subject to the provisions of the deeds of 1930 and 1940 and so that the powers of appointment in the deed of 1930 should, after the date of the deed of 1942, no longer be exercisable. The question arose whether, for the purposes of the rule against perpetuities, the power in the deed of 1895 was general or special, and whether the deed of 1930 or later deeds adversely affected the estate in tail male limited (in the events which happened) to Lord Churston under the deed of 1895. By a disentailing assurance of 1953 he assigned to the Settled Land Act trustees of the deeds of 1895, 1898 and 1930 the property whereto he was entitled under that of 1895 or dispositions to the uses or on the trusts thereof for any entailed interests, subject to prior charges and incumbrances but free from those interests, in trust for him in fee simple. A summons was taken out by the trustees to determine how the estates were now held.

ROXBURGH, J., said the question was whether certain limitations affecting these estates infringed the rule against perpetuities. It was common ground that the answer to that question depended on whether or not appointments under the powers had to be read back into the original settlement for the purpose of applying the rule. It was also common ground that, if the powers of appointment were special powers when the field in which they could be exercised was limited, then the instrument exercising the power had to be read back into the instrument creating it. Finally, it was also common ground that, if the power were a general power, then the instrument need not be read back into the original settlement. The two powers here differed in this respect: the first was a joint power of appointment with the consent of a person who was not a donee of the power; the second a joint power of appointment without any additional consent. In his judgment, the power of 1895 was indistinguishable from the power in *In re Watts* [1931] 2 Ch. 302, which was a special power. He could not, moreover, accept as correct the *dictum* in the note in Key & Elphinstone's Precedents in Conveyancing, 14th ed., vol. 2, p. 1049. The power of appointment in the deed of 1898 was, following the *dicta* of Samuel, J., in *A.-G.* v. *Charlton* (1877), 2 Ex. D. 398, at p. 412, wholly different from a general and absolute power and the joint donees could not be treated as owners. In consequence, the deeds of 1898 and 1923 had to be read back into the settlement of 1895 and accordingly infringed the rule against perpetuities. He would declare in the circumstances that the settled estates were held for Lord Churston for a beneficial and indefeasible estate in fee simple in possession. Declaration accordingly.

APPEARANCES: *J. V. Nesbitt* (*Ellis, Peirs & Co.*); *Charles Russell*, Q.C., and *E. I. Goulding* (*Ellis, Peirs & Co.*); *Milner Holland*, Q.C., and *G. C. D. S. Dunbar* (*Ellis, Peirs & Co.*).

[Reported by Mrs IRENE G. R. MOSES, Barrister-at-Law] [2 W.L.R. 386

POWER OF APPOINTMENT: GENERAL POWER EXERCISED BY WILL MADE AFTER 1925: ADVANCEMENT

***In re* Bransbury, deceased; Grece *v.* Bransbury**

Vaisey, J. 18th February, 1954

Adjourned summons.

A testator, who died in 1921, by his will made in 1915 and a codicil made in 1919, made a disposition on trust "for such person or persons and in such manner as my said wife shall from time to time by will or codicil appoint." The wife, who died in 1934, by her will made in August, 1926, exercised the power of appointment by declaring that her trustees were to hold the property subject to the power "upon and subject to the same trusts, powers and provisions for the same person or persons and in the same manner in all respects" as the trusts declared in relation to her own residuary estate; which was so settled that certain infants were entitled to shares, contingently on attaining a certain age and on surviving their parents. Section 32 of the Trustee Act, 1925, which authorises trustees to advance beneficiaries with contingent interests, provides by subs. (3): "This section does not apply to trusts constituted or created before the commencement of this Act." A question arose whether the statutory power of advancement could be exercised in respect to the funds appointed by the wife, and the trustees of both wills (who were the same persons) took out a summons for the determination of the question.

VAISEY, J., said that the proper answer to the question was a declaration that the power of advancement conferred by s. 32 was exercisable by the testatrix's trustees, both in respect of the husband's residue and of her own residue. There seemed to have been some misunderstanding of his own decision in *In re Batty* [1952] Ch. 280; in that case the instrument creating the power was executed before 1926 and the instrument exercising the power was executed after 1925; but the power in that case was a special or limited power, which was of a fiduciary nature and must be read back into the instrument creating it. In the present case, the power was general and there could be no doubt that the rule affecting special powers did not apply (see *In re Gordon and Adams' Contract* [1914] 1 Ch. 110). Accordingly, the trustees were empowered to act under s. 32. Declaration accordingly.

APPEARANCES: *H. E. Francis; A. J. Belsham; C. D. Myles* (*Loxley & Preston*, for *G. Lewis F. Grece*, Redhill); *P. W. E. Taylor* (*Eland, Nettleship & Butt*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 496

PASSING-OFF: SLANDER OF TITLE: BOXING CHAMPIONSHIP TITLES

Serville *v.* Constance and Another

Harman, J. 17th February, 1954

Motion.

The plaintiff became the "Welter-weight Champion of Trinidad" in December, 1952, and came to England in 1953. He found that the first defendant (who had, in fact, defeated him in Trinidad in September, 1952) was styling himself as the "Welter-weight Champion of Trinidad" and "Welter-weight Champion of the British West Indies." The plaintiff brought a motion (which was treated as the trial of the action) to restrain the first defendant and his manager from permitting the first defendant to assume those titles or from passing himself off as the holder of those titles. The plaintiff was not able to prove that the first defendant had acted with an intention to injure him, or that he knew that the plaintiff had become the accredited champion.

HARMAN, J., said that it was clear enough that the defendant was slandering the title of the plaintiff, or was uttering what the

law sometimes called an injurious falsehood about the plaintiff, and the plaintiff had a cause of action against the defendant under that head. The leading modern case on the subject was *Balden* v. *Shorter* [1933] 1 Ch. 427, a decision of Maugham, J. But the gist of that action was what the law knew as malice. It was not possible to succeed against a man for slander of title unless it could be proved that he uttered the slander, knowing it to be untrue, with the object of causing injury. That the plaintiff was unable to do. The action had been dressed up as a passing off action. But the action of passing off was essentially a cause of action arising out of confusion. That element was entirely lacking here; there was no confusion here between the plaintiff and the first defendant, and there was no likelihood of the one person being mistaken for the other. The plaintiff could not allege, as it would have been necessary for him to allege, in the statement of claim, that the words "Welter-weight Champion of Trinidad," when applied to a boxer, meant to the English public the plaintiff and the plaintiff alone. Nobody in this country knew anything about the plaintiff: he only came here in December, 1953, and he had no reputation here to protect. It was argued that this case was analogous to *Hines* v. *Winnick* [1947] Ch. 708, where the plaintiff had become identified in broadcasts with a certain "Dr. Crock and his Crackpots" and was held to have the right to protect that reputation. But a boxing enthusiast hearing of the "welter-weight champion of Trinidad" would be most unlikely to think of the plaintiff. The essential element of passing off could not even be predicated. Although the plaintiff had great reason to complain of what the defendant did, he had chosen the wrong remedy. It had been admitted for the defendant (*a*) that the plaintiff was at the present moment holder of the welter-weight championship, and (*b*) that the first defendant was not, and he would give an undertaking not, so long as the plaintiff held that championship, to represent that he, the first defendant, held it. In the circumstances there would be no order on the motion. Motion dismissed.

APPEARANCES: *Edward Grayson* (*S. M. Fruitman*); *Arthur Bagnall* (*Barnett Janner & Davis*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 487**

QUEEN'S BENCH DIVISION

JUSTICES: PENALTY IN GUISE OF COSTS

R. *v.* Highgate Justices; *ex parte* Petrou

Lord Goddard, C.J., Byrne and Parker, JJ. 27th January, 1954

Application for an order of certiorari.

The manager of a club was summoned before justices under the Licensing (Consolidation) Act, 1910, on charges relating to the sale and supply of liquor at the club. The secretary, who was the lessor of the premises, was also summoned to show cause why the club should not be struck off the register. At the conclusion of the hearing, the justices were informed that the costs of the prosecution amounted to 21 guineas. They convicted the manager, fined him £10 and ordered him to pay 20 guineas costs. They further ordered the secretary to pay £100 costs and they ordered the club to be struck off the register. The secretary applied for an order of certiorari, on the ground that, as the costs of the prosecution had been substantially met, their order amounted to a fine in excess of jurisdiction when no charge had been laid.

LORD GODDARD, C.J., said that he regretted that any bench of justices could have acted as these justices did. They were not imposing costs on the applicant, they were imposing a penalty on her when she had not been convicted of any offence, but had only come before the court to show cause why the premises should not be struck off the register. Under the guise of making an order for costs, the justices inflicted a penalty of £100, which could only have been intended as a penalty. Since, by their order against the manager, they had satisfied the costs of the prosecution apart from one guinea, certiorari would go and he would direct that the papers be sent to the Lord Chancellor.

BYRNE and PARKER, JJ., agreed. Certiorari granted.

APPEARANCES: *N. King* (*A. L. Philips & Co.*); *S. A. Morton* (*Sir Clifford Radcliffe*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 485**

PROBATE, DIVORCE AND ADMIRALTY DIVISION

DIVORCE: ESTOPPEL: PREVIOUS PROCEEDINGS

Hill *v.* Hill

Davies, J. 22nd January, 1954

Defended petition for divorce.

The husband by his petition alleged that he had been deserted by his wife when she left him on 7th May, 1949. The wife, by her answer, denied desertion and alleged that she had had just cause for leaving him by reason of his behaviour and unkindness. In August, 1949, the wife had presented a petition for divorce upon the ground of alleged cruelty; but her petition had been dismissed by Pilcher, J., on 7th March, 1950. In her answer in these proceedings, however, the wife relied upon allegations which were substantially the same as those previously made in support of her allegation of cruelty. The husband, by his reply, alleged that the respondent was estopped from alleging those matters as they were the same, or substantially the same, as those which were alleged, or would have been alleged, in the wife's earlier petition. The court heard argument upon the question of estoppel, and ruled in favour of the petitioner upon that point, before evidence was called; but judgment was given after the conclusion of the evidence. Pilcher, J., had held in his judgment that, although the wife's health had been affected during cohabitation, if and so far as she had proved anything against her husband, the incidents had been extremely trivial, and that she had entirely failed to make out any matrimonial misconduct of any kind.

DAVIES, J., said that counsel for the wife was not prepared to assent to the proposition that the defence of just cause to the charge of desertion fell together with the cross-charge of constructive desertion, which counsel had not pursued in view of decisions since the date of the answer. It was, therefore, necessary to decide whether the wife, who had had her charges of cruelty dismissed, was entitled to re-litigate them again by way of a shield against her husband's charge of desertion, and to allege just cause as a defence. This was not a case such as *Dixon* v. *Dixon* [1953] P. 103, where it was difficult clearly to appreciate the grounds upon which the previous petition had been dismissed; it was plain in this case why Pilcher, J., had dismissed the previous petition. Referring to the observations of Denning, L.J., in *Timmins* v. *Timmins* [1953] 1 W.L.R. 757, 761, upon *Pike* v. *Pike* [1953] 3 **W.L.R.** 634*n*, his lordship said that Pilcher, J., had not dismissed the petition on the ground that there had been no evidence of injury to health; he had thought that there had been, and had said in terms that if he (Pilcher, J.,) had been satisfied that there was matrimonial misconduct he would have been prepared to say that such injury was occasioned by the husband's conduct. The ground upon which he had dismissed the petition had been that, if and in so far as the wife had proved anything against the husband, the incidents had been extremely trivial and she had entirely failed to make out any matrimonial misconduct of any sort or kind. It was therefore quite impossible to say that the matters alleged by the wife not "were" but "could be" of such a grave and weighty character that even though they had been held not to amount to cruelty they could again be re-litigated and relied upon as constituting just cause for the wife to leave her husband. There might be cases where, despite an estoppel against a party, the court would think it necessary to inquire, as, for example, when there had been a finding of no adultery in a previous suit and the court had reasons for suspicion although a party was estopped from raising the point again: in such a case the Queen's Proctor could no doubt assist the court. But the wife in the present case had entirely failed to convince Pilcher, J., that the husband had been treating her with cruelty, and there was nothing on which she sought to rely except the same alleged previous conduct on the part of the husband. The most to which it could amount would be conduct of the same kind as cruelty but less than cruelty. There would, therefore, be a decree *nisi* on the prayer of the husband's petition. Decree *nisi*.

APPEARANCES: *John B. Latey* (*Church, Adams, Tatham & Co.*, for *Matthew Arnold & Baldwin*, Watford); *C. A. Marshall-Reynolds* (*Henry B. Sissmore & Co.*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[2 W.L.R. 473**

COURT OF CRIMINAL APPEAL

PROBATION ORDER TO BE INCLUDED IN PAPERS SENT TO QUARTER SESSIONS

R. *v.* Maber

Lord Goddard, C.J., Pilcher and Slade, JJ. 1st March, 1954

Application for leave to appeal against sentence.

The applicant was charged with and pleaded guilty, before a court of summary jurisdiction, to a breach of a probation order and was committed to London Sessions for sentence, when she received a sentence for borstal training. The probation order was not sent to the Sessions nor was it before the Court of Criminal Appeal. The applicant applied for leave to appeal against sentence.

PILCHER, J., said that the application was refused, but inasmuch as it appeared that the probation order for the breach of which she was charged was not sent to the Sessions, the court wished to say that, where a person was charged with breach of a probation order, the probation order together with a statement of the breach in respect of which the charge was brought should be with the papers in the case.

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 501**

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read Second Time :—

Civil Defence (Electricity Undertakings) Bill [H.C.] [4th March.
Industrial Diseases (Benefit) Bill [H.C.] [2nd March.
Royal Irish Constabulary (Widows' Pensions) Bill [H.C.] [2nd March.

Read Third Time :—

Dover Harbour Consolidation Bill [H.L.] [2nd March.
Northern Assurance Bill [H.L.] [2nd March.

In Committee :—

Development of Inventions Bill [H.C.] [2nd March.
Merchant Shipping Bill [H.C.] [4th March.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Pensions (Increase) Bill [H.C.] [4th March.

To amend s. 2 of the Pensions (Increase) Act, 1944, by abolishing the limit of pension up to which increases may be made under that section and substituting 10 per cent. for the scale of increases authorised by that section.

Television Bill [H.C.] [4th March.

To make provision for television broadcasting services in addition to those provided by the British Broadcasting Corporation, and to set up a special authority for that purpose; to make provision as to the constitution, powers, duties and financial resources of that authority and as to the position and obligations of persons contracting with that authority for the provision of programmes and parts of programmes; and for purposes connected with the matters aforesaid.

Read Second Time :—

Atomic Energy Authority Bill [H.C.] [1st March.
Kent Water Bill [H.C.] [4th March.

B. QUESTIONS

PRIVATE INTERNATIONAL LAW (REPORT)

The ATTORNEY-GENERAL stated that the First Report of the Committee on Private International Law was published on 18th February. Its recommendations as to the law of domicile would be considered but no undertaking could be given as to when the matter would be dealt with. [1st March.

UNITED STATES SERVICEMEN (DEBTS)

Mr. ANTHONY NUTTING stated that, provided a United States serviceman who had returned to the United States leaving debts unpaid in this country was still in the Forces, and provided the debt was admitted or had been reduced to a judgment, it was always open to the creditor in this country to seek the assistance of the United States service authorities here or in the United States in obtaining satisfaction. Failure to pay was an offence against United States military law. Where the debtor had ceased to be in the United States services, H.M. Government would lend assistance where necessary. [1st March.

PATENTS APPLICATIONS (HEARINGS AND DECISIONS)

Mr. PETER THORNEYCROFT stated that the time between the receipt of the request for a patent and the date of the hearing was usually about four weeks, including the period of at least ten days' notice which the Comptroller had to give under the Patent Rules.

In the large majority of cases the Comptroller's decision was given at the hearing. When the decision was deferred and given later in writing, or when the applicant asked for confirmation of the decision in writing, the average time between the hearing and the issue of the written decision was now about three weeks.

He assumed the question referred to cases where the applicant asked to be heard in official objections, and not to hearings in proceedings in opposition to the grant brought by a third party. [2nd March.

WAR DAMAGE COMMISSION

Mr. R. A. BUTLER stated that no date had been fixed for the winding up of the War Damage Commission. In view of the number of cases in which war damage had to be made good, the time was not yet ripe for such action. [2nd March.

VISITING FORCES ACT, 1952

The HOME SECRETARY said he hoped to be able to make a statement next week as to when it was intended to bring the Visiting Forces Act, 1952, into force. [4th March.

LAY JUSTICES (METROPOLITAN AREA)

Lieut.-Col. LIPTON asked whether the Home Secretary was aware that many J.P.s in London felt that they were being treated as half-wits, incapable of dealing with minor cases which would help considerably to relieve the congestion and delay which prevailed in so many metropolitan magistrates' courts at the present time. Mr. E. C. MALLALIEU asked whether the Home Secretary was aware that it was still possible for a case to be remanded from week to week, being heard perhaps for only a quarter of an hour each day.

The HOME SECRETARY said he would be very interested to look into a case of that kind. There had not yet been sufficient time to assess the effect of the order he made last year under s. 11 (9) of the Justices of the Peace Act, 1949, specifying the classes of cases to be taken by lay justices in the County of London, but he would continue to keep the matter under review. There were practical difficulties, but lay justices were now hearing cases in a spare room at Bow Street, and a domestic proceedings court, with a bench consisting of a metropolitan magistrate and two lay justices selected from a panel, had been set up with jurisdiction to deal with cases arising in any part of the metropolitan courts area or in the City of London. [4th March.

STATUTORY INSTRUMENTS

Abington–Lanark–Airdrie–Cumbernauld Trunk Road (Castledykes, Wiston Diversion) Order, 1954. (S.I. 1954 No. 208.)
Ashton-under-Lyne (Repeal of Local Enactment) Order, 1954. (S.I. 1954 No. 196.)
Coal Mines (Certificates of Competency, Shot Firers' and Surveyors' Certificates) (Fees) Order, 1954. (S.I. 1954 No. 212.)
London–Edinburgh–Thurso Trunk Road (Shotton Edge and Northwood Diversion) (Revocation) Order, 1954. (S.I. 1954 No. 207.)
London Traffic (Narrow Street, Stepney) Regulations, 1954. (S.I. 1954 No. 198.)
London Traffic (Prescribed Routes) (No. 3) Regulations, 1954. (S.I. 1954 No. 197.)
Marriages Validity (All Saints Chapel, Glossop) Order, 1953. (S.I. 1954 No. 199.)

Marriages Validity (Methodist Church, Moscow Mill Street, Oswaldtwistle) Order, 1953. (S.I. 1954 No. 200.)

National Insurance (Maternity Benefit and Miscellaneous Provisions) Regulations, 1954. (S.I. 1954 No. 189.) 11d.

Petty Sessional Divisions (Herefordshire) Order, 1954. (S.I. 1954 No. 211.) 6d.

Rawtenstall (Repeal of Local Enactment) Order, 1954. (S.I. 1954 No. 195.)

Retention of Cables and Pipes under Highways (Cheshire) (No. 1) Order, 1954. (S.I. 1954 No. 204.)

Retention of Cables over and under Highway (Devon) (No. 2) Order, 1954. (S.I. 1954 No. 205.)

St. Helens (Extension) Order, 1954. (S.I. 1954 No. 202.) 11d.

Stopping up of Highways (London) (No. 3) Order, 1954. (S.I. 1954 No. 184.)

Stopping up of Highways (London) (No. 4) Order, 1954. (S.I. 1954 No. 209.)

Stopping up of Highways (Middlesex) (No. 3) Order, 1954. (S.I. 1954 No. 210.)

Stopping up of Highways (South Shields) (No. 1) Order, 1954. (S.I. 1954 No. 191.)

Workington and Ennerdale Water Order, 1954. (S.I. 1954 No. 201.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Adoption by Divorced and Re-Married Mother—Paternity—Consents

Q. *A* is the mother of a child the subject of a proposed adoption. She married in 1939. She gave birth in June, 1945, to the child. Her husband obtained a divorce which was made absolute in August, 1946, on the grounds of *A's* adultery with a named co-respondent. In the petition it was stated that the paternity of the child "is not admitted." The divorce was not defended and no action was taken at the hearing with regard to the child. *A* herself states that the father of the child is the co-respondent, as she did not have intercourse with her husband during the period when the child would be conceived. *A* has now re-married and wishes to adopt the child with her present husband. Her present husband is not the co-respondent. What consents will have to be obtained in these adoption proceedings?

A. It is assumed that both *A* and her present husband are to be applicants for adoption. If *A* alone applies, her present husband must consent (Adoption Act, 1950, s. 2 (4)). The consent of the first husband would not be required, we think, if *A* were prepared to give evidence (which she can do since the abrogation of the *Russell* rule—see now Matrimonial Causes Act, 1950, s. 32) that he is not the child's parent, though the court might regard him as a person to whom the proceedings ought to be notified. As to the co-respondent, the mother's evidence suggested above would bring him in as a parent, and might appear to render his consent requisite under s. 2 (4) of the Adoption Act, unless the court dispenses with it on one of the grounds set out in s. 3 (1). But the directions given in the footnotes to the prescribed forms of application support the view that, unless he is liable under an agreement or affiliation order to contribute to the child's maintenance, a putative father need not be served or asked for his consent. We conceive that it would be the duty of the guardian *ad litem* to bring the exact circumstances to the notice of the court.

Rent Restriction—Possession—Husband and Daughter of Tenant who has Abandoned Home

Q. *T* is the owner of a dwelling-house which is let on a weekly tenancy to *B*. *B* is a married woman. *B* resided at the dwelling-house with her husband and daughter. Some two and a half years ago *B* left the dwelling-house due to matrimonial differences, and at that time notified *T* that she wished to terminate her tenancy and have it transferred to her daughter in order to provide a home for her until she attained twenty-one years and undertook to be responsible for the rent. *T* informed *B* that he was only prepared to accept *B* as tenant, and to facilitate the payment of rent by *B* opened an account with a bank for this purpose. The daughter has continued to reside at the dwelling-house and rent has been paid into the account and accepted from the daughter on behalf of *B*. *T* now wishes to obtain possession of the dwelling-house and notice to quit has been served on *B*. It is anticipated that this notice to quit will be ignored by *B*, as she of course no longer resides at the dwelling-house. In these circumstances is the notice to quit effective against the husband and daughter, or, in the alternative, what steps can be taken to obtain possession? As *B* has abandoned the home, is this an adequate ground for possession? It is appreciated that, if a husband tenant abandons the home leaving a wife, possession will not be granted, but if the position is reversed will the same principle apply?

A. The principle expounded by Denning, L.J., in *Old Gate Estates, Ltd.* v. *Alexander* [1950] 1 K.B. 311 (C.A.), does not, in our opinion, apply to husbands and daughters of tenants as it does to wives, a wife enjoying her "very special position" by reason of the husband's duty to "provide a roof over her head." The husband and daughter could not, accordingly, invoke rights of status; but the plea might be put forward that they were in occupation, not as husband and daughter, but as licensees of the now statutory tenant; in the hope of establishing such "possession" as was found to exist in *Brown* v. *Draper* [1944] K.B. 309 (C.A.). But in our opinion the plaintiff's difficulties in that case were primarily due to his suing the tenant's deserted wife in trespass instead of suing *the tenant* for possession. We consider that if proceedings be taken against *B* (the husband and daughter being notified so that they may have the opportunity of being let in to defend) proof of the notice to quit and the absence of intention to return would entitle *T* to judgment.

Custody and Maintenance—Husband's and Wife's Summonses Pending in Different Courts—Priority

Q. A wife takes out a summons for the custody and maintenance of two children against her husband, returnable in the county of Anglesey. After issue and service of summons, the husband takes out a summons for the custody of the two children against the wife, returnable in the City of London on a date prior to the date of hearing of the wife's application. Does the first summons take priority over the second summons?

A. It is assumed that both summonses have been issued in magistrates' courts, as, if either has been issued in the High Court or a county court, clearly the superior court takes precedence. If both summonses are before magistrates under the Guardianship of Infants Acts, we think that the London magistrates are entitled to hear their case if they wish but they may adjourn it to let the Anglesey court hear theirs first, both out of courtesy to that court and also because, as may be the case, the home where the children will be is in Anglesey and a court there would therefore have a better opportunity of considering matters affecting their welfare. No doubt the London court will be told of the position as soon as the case is called before them and it might be wise to tell their clerk at once and draw his attention to any undue expense the wife may have to incur if the hearing is in London. Should the wife's summons be under the Summary Jurisdiction (Separation and Maintenance) Acts, the London magistrates might be persuaded to refrain from adjudicating anyhow, as the husband's conduct towards her might well be a material factor in considering his suitability for his children's custody, though their welfare is, of course, the paramount consideration. Neither magistrates' court has "precedence" over the other and the solution of this conflict of jurisdiction must be left to the good sense of both courts. The Magistrates' Courts Act, 1952, s. 119 (3), has doubtless been noted.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Demolition Orders—"Unfit for Human Habitation"—Rights as between Lessee and Ground Landlord

Q. The lessee of several small country cottage properties holds under a lease with an unexpired residue of some eighty years. The local authority have served notice of intention to consider making demolition orders and there is no doubt that the orders will be made, on the ground that the council is satisfied that the properties are "unfit for human habitation and not capable at a reasonable expense of being rendered so fit." The lessee is far from satisfied that his properties merit complete demolition and intends to obtain professional advice upon the question whether the properties could in fact be brought into line with modern legislative requirements at reasonable cost. If that can be done, then he intends to press the council to permit such work. The properties are in a good state of repair and it seems that the complaint of the council is based on such grounds as that there is insufficient headroom, no rear entrance, no running hot, as well as cold water, no bathroom, etc. The lessee is desirous of ascertaining his position under the lease, which is in the usual form as to maintaining the properties in good repair and to hand over in that condition on expiry of the term granted or sooner determination. (1) Has the ground landlord any right of action against the lessee so as to cause the latter either to compensate him for the loss of reversionary interest in the properties, to compel payment of ground-rent for the rest of the lease term, or otherwise? (2) As the notices indicate that the properties will be demolished at the lessee's expense, has the latter any right to require contribution respecting that expense from the ground landlord? (3) Will the lessee, upon demolition, have any right to require the freeholder to accept a surrender of the lease, and if so, upon what terms? (4) Would the lessee be entitled to retain the lease and build fresh properties thereon; if so, and they were valued at more than the old properties, would the ground landlord be entitled to call for any increased ground-rent? (5) Most particularly, if the lessee can, after all, satisfy the council that the properties can in fact be rendered fit for habitation at reasonable expense and they consent to let the properties be so restored, can the lessee obtain contribution from the ground landlord to cover some proportion of such cost, in view of the fact that such expenditure would obviously result in a greater reversionary value at the end of the lease?

A. In general, the case is one for an application by the lessee to the local county court under the Housing Act, 1936, s. 160, for an order under that section. It will be seen that the court has very wide powers to modify the lease, and even to determine it. Thus (1) The obligation to deliver up and the reddendum could be varied if determination of the lease were not sought and granted. (2) Both the lessee and the ground landlord satisfy the definition of "owner" in s. 188 (1) of the Act, and again there is a judicial discretion in such a case, this time to be found in s. 13 (2), to apportion the expenses between them ("... as the judge may determine to be just and equitable"). If the lessee were to pay the expenses, he could then claim contribution from the ground landlord under that subsection. (3) There is no absolute right to disclaim, but the court can, as indicated, make an order for determination under s. 160, and can do so either conditionally or unconditionally or subject to terms and conditions, including conditions providing for the payment of money either way, such as the judge thinks just and equitable. Regard is to be had to liabilities under the lease, as to which provision see *Monro* v. *Burghclere* (*Lord*) [1918] 1 K.B. 291, and cases therein reviewed. (4) This is covered by the last answer. (5) In our opinion, an application could be made under s. 160 if the county court on hearing the appeal under s. 15 did not quash but confirmed or varied the order, which would then still be "operative"; and *a fortiori* if, no appeal having been entered or heard, the lessee came to terms with the council on the lines suggested.

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to appoint Mr. Edward Ryder Richardson, Q.C., to be Recorder of the City of Stoke-on-Trent, with effect from 5th March.

Mr. John Herbert Anthony Crundell, town clerk and Clerk of the Peace of Rochester since June, 1951, has been appointed town clerk of Surbiton in succession to Mr. R. H. Wright, who retires at the end of March.

Mr. James Brian Dawson Haynes, solicitor, of Salford, has been appointed the new Coroner for Salford, in succession to the late Mr. A. Howard Flint.

Mr. Geoffrey Thomas Heckels, solicitor, of Maidstone, and senior assistant county solicitor, has been promoted to deputy clerk of the Kent County Council.

Mr. James Stanley Hipwell, solicitor, of Norwich, has been appointed clerk to the Taverham Justices in succession to Mr. R. N. Jones, who retires on 31st March.

Mr. R. Hunter, assistant solicitor with Cardiff Corporation, was on 2nd March appointed deputy town clerk of Barry.

Mr. F. B. W. Linnitt, clerk and solicitor to Penge Urban District Council, has been appointed clerk and solicitor to Malling Rural District Council.

Mr. Alan Neave Mundy, assistant solicitor to Hornsey Borough Council, has been appointed assistant solicitor to Wallasey County Borough Council in succession to Mr. F. H. Wilson.

The following appointments are announced in the Colonial Legal Service: Mr. F. E. Field, Assistant Attorney-General and Legal Draftsman, Barbados, to be Solicitor-General, Barbados; Mr. R. R. Phillips, Resident Magistrate, Jamaica, to be Fourth Puisne Judge, British Guiana; Mr. P. B. McCarthy to be Resident Magistrate, Tanganyika; and Mr. G. H. Wootton to be Resident Magistrate, Uganda.

Personal Notes

Mr. Philip John Everett Davey, solicitor, of Cirencester, was married on 20th February to Miss Judith Mary Pickbourne, of Nottingham.

On 1st March, Mr. Edgar Pell completed fifty years' service as a magistrates' clerk in Bradford. He is now the chief assistant magistrates' clerk at Bradford City Court.

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

On 25th February, 1954, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of Arthur Mason Amery, of 12–14 Rodney Road, Cheltenham, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

Richard Hugh Mills Owens, of Attorney-General's Chambers, P.O. Box 112, Nairobi, Kenya Colony, solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires in due course to be called to the Bar, an order was, on 25th February, 1954, made by the Committee that the application of the said Richard Hugh Mills Owens be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

On 12th February, 1954, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that on 26th February, 1954, the name of James McMurdy, of 127 Rosendale Road, West Dulwich, London, S.E.21, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

A conference on "Road Safety and the Law" is to be held in London on Saturday, 27th March. Dr. A. L. Goodhart, K.B.E., Q.C., Master of University College, Oxford, will preside, and the speakers are Sir Carleton Allen, Q.C., D.C.L., J.P., Mr. J. P. Eddy, Q.C. (Stipendiary Magistrate, East and West Ham), Mr. Walter Raeburn, Q.C. (Recorder of West Ham), the Chief Constable of Oxfordshire, and a clerk to a magistrates' court. The conference is organised by the Pedestrians' Association for Road Safety.

At The Law Society's Preliminary Examination held on 1st, 2nd, 3rd and 4th February, twenty-five candidates out of sixty-eight were successful.

OBITUARY

MR. H. N. TEBBS

Mr. Henry Nelson Tebbs, solicitor and clerk to the Bedford Borough Magistrates, died on 6th March, aged 81. He was admitted in 1894.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Pensions for Solicitors' Clerks

Sir,—I feel I must write to correct a misstatement in the article on the Millard Tucker Report appearing in the issue of THE SOLICITORS' JOURNAL of the 27th February.

It is there stated that "except perhaps for one or two very large firms of solicitors who may run superannuation schemes, everyone in either branch of the legal profession is either self-employed or a 'non-provided-for employee'."

While it is no doubt true that certain of the big firms run their own schemes, the above-mentioned statement completely ignores the existence of The Solicitors' Clerks' Pension Fund which was established over twenty years ago and the value of whose investments exceeds £1,000,000. This fund provides pensions for both male and female clerks employed in the profession on the basis of contributions by the clerk and the employer. The rules of the fund provide that a clerk can move from firm to firm within the profession without forfeiting his pension rights, so it will be seen that the fund is truly one for the benefit of the profession as a whole and not merely of individual firms.

WILLIAM L. ADDISON,
Chairman, The Solicitors' Clerks' Pension Fund.

London, W.C.2.

[The statement quoted refers to persons "in either branch of the legal profession" and was not intended to apply to unadmitted clerks. Nevertheless it requires some qualification, as it takes no account of the position of some employed solicitors in local government service and elsewhere.—ED.]

CASES REPORTED IN VOL. 98

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